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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,839	03/17/2005	Pierre-Jean Querquant	0001702/2270USU	6383

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,839	Applicant(s) QUERQUANT, PIERRE-JEAN	
	Examiner Gloria Hale	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 July 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7-16-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 it is not clear as to how the lace material is formed from an elastic material. A lace material is formed from yarns or threads by either being knitted or woven but it is not formed of an elastic material. It is formed of the addition of elastic yarns or threads in the lace material when it is woven or knitted. It is not clear as to what structure makes the material thermoformable, weldable and capable of bonding. Also the lace article is only being claimed as being "capable of" but not positively including those limitations. IF the material itself is moldable and thermoformable it should be claimed as such. Applicant's claims are unclear and confusing. Applicant is attempting to claim what the article is "capable of" and is not claiming the exact structure of the article. It is also not clear as to what structure makes the material deformed without damage. It is not clear as to what the metes and bounds of the term "Deformed" is. It is not clear as to what mechanical stability is being claimed or as to what structure causes it. It is not clear as to what adhesive is elastic and that has a maintained shape deformation. IT is not clear as to what structure is exactly being claimed in the claims. It is not clear as to what the 6.6 polyamide type is. The claims are replete with functional

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language and it is not clear as to what structure performs the functions. It is not clear as to what material provides the claimed responsiveness in claims 14 and 17. It is not clear as to what the "reinforced edges" encompass. In regard to claim 20 there is no antecedent basis for "the cups" IN claims 27 and 32 it is not clear as to what structure forms the responsiveness. It is not clear as to what the "herringbone" pattern encompasses.

Applicant is claiming a "lingerie article" but no specific lingerie article structure is being claimed. Only a lace material is claimed in the body of the claim. Applicant needs to claim the lingerie article structure in the body of the claim such as being a brief, panty, and brassiere and include structure of those garments. Claim 6 on states that the "adhesive" is "Capable of" but the limitations have not been positively claimed. Throughout the claims the term "capable of" is used and the limitations that follow thereafter are not positively claimed. In claim 15 it is not clear as to how the "lace edges ARE Reinforced". Throughout the claims applicant is attempting to claim a lingerie article. However the structure is then claimed with functional language that describes the method used to construct the article or the material it is made from. In claim 21 it is not clear as to how and where the "welding of said pieces" is done or what the pieces encompass. Are they cups? It is not clear as to what the reinforcement elements are and as to where they are cut out from. The claims are incomplete and unclear. Applicant is also claiming multiple garment types of a brassiere, thongs, panties and briefs. Only one embodiment or species should be claimed. Claim 32 is unclear in regard to the "responsiveness" as discussed above in the previous claims.

In conclusion, the indefinite language, such as the recitations that include “capable of” need to be amended to more clearly define the structure of the invention. Also the relationship between the component parts needs to be better defined.

However, the claims, as best understood, have been examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9,14-17, 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith US 5,447,462.

Smith discloses a lingerie article of either a panty, brief or brassiere comprising an elastic lace 23 with a netlike adhesive reinforcing element 13 that is “capable of” being moldable and bondable as claimed. Smith discloses the material as being a polyamide and including elasthane within the percent ranges of polyamide and elasthane and being of the type claimed. The net film is also considered to be lace with the openings of the net and also includes the claimed adhesive that is thermoformable at the claimed temperature levels. The reinforcing element is the net like film and adhesive combination wherein the multilayer structure itself, that is laminated together, forms the reinforcing element. NO specific reinforcing element structure has been claimed by applicant. The material provides the responsiveness as claimed. The layers are stretchable and are combined with the well known manufacturing step of ultrasonic

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welding. Te cups include the bonded lining layers as claimed. Smith includes the lining, inner layer. (See Smith, figures,

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13, 18, 21 and 23-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,447,462).

Smith discloses the invention substantially as claimed. However, Smith does not specifically disclose the reinforcing element material as being a jersey material. One of ordinary skill in the art at the time the invention was made would have had the skill to select any known lingerie materials, such as a jersey knit structure, in place of the stretch material layer as claimed. The Smith garment is a knit stretch material and a jersey knit is a certain stretch knit fabric structure. Constructing the stretch knit material of Smith in a jersey knit is an obvious modification that would be done to provide a finer and softer stretch knit material so that the material lies smoothly on the wearer. Smith already discloses the percent of polyamide and elasthane in the garment and one of ordinary skill in the art would have had the skill and knowledge to construct those material levels into the jersey knit as desired in order to achieve the

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desired aesthetic effect and level of stretch. Smith discloses the brassiere construction. Smith also does not disclose the claimed material widths of 34cm and 30 cm. One of ordinary skill in the art at the time the invention as made would have known to select any fabric width that is sized large or small enough to construct the garment component desired. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the claimed width dimensions in order to achieve the desired aesthetic effect. The Smith garments are then constructed with bonding and molding as claimed.

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the cited references, alone or in combination, disclose the herringbone pattern after welding as claimed in claim 20.

Claims 1-19 and 21-32 would be allowable if amended to overcome the rejections under 35 USC 112 in addition to the prior art rejections over Smith. The claims need to be amended to define the exact location of the lace material and include a limitation as to what the reinforcing element encompasses. The present claim 1 is extremely broad and only claims a lingerie article with a lace material and one reinforcing element that can be any synthetic, thermo formable, weldable and bondable "capable of" material which is clearly seen in Smith. In an attempt to broadly claim the invention the structure of the invention has not been clearly and completely defined in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/
Primary Examiner, Art Unit 3765
